

ESTTA Tracking number: **ESTTA354816**

Filing date: **06/24/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|---------------------------|--|
| Proceeding | 92051116 |
| Party | Defendant Parsons Officials Supplies, Inc. |
| Correspondence Address | Parsons Officials Supplies, Inc. 501 Lunt Ave. Schaumburg, IL 60193 UNITED STATES |
| Submission | Other Motions/Papers |
| Filer's Name | Michelle L. Calkins |
| Filer's e-mail | mcalkins@leydig.com, tmiller@leydig.com |
| Signature | /Michelle L. Calkins/ |
| Date | 06/24/2010 |
| Attachments | Motion to TTAB to set aside judgment.pdf (44 pages)(1655820 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|-----------------------------------|---|------------------------------|
| RACER SPORTING GOODS CO., LTD., |) | |
| |) | |
| Petitioner, |) | Cancellation No. 92051116 |
| |) | |
| v. |) | Registration No. 1,326,105 |
| |) | |
| PARSONS OFFICIALS SUPPLIES, INC., |) | Date of Issue: Mar. 19, 1985 |
| |) | |
| <u>Respondent.</u> |) | |

MOTION FOR RELIEF FROM FINAL DEFAULT JUDGMENT

This Motion is made in connection with Registration No. 1,326,105 for the mark “+POS” and Design (the “Registration”) owned by Parsons Officials Supplies, Inc. (the “Registrant”). On October 27, 2009, the Trademark Office issued an order cancelling the trademark registration after a cancellation action was filed by Racer Sporting Goods Co., Ltd. (“Racer”) (cancellation no. 92051116).

Under Federal Rules of Civil Procedure, Rules 55(c) and 60(b), upon motion and under just terms, the Board has the authority to relieve a party from a final judgment for several reasons, including “(1) mistake, inadvertence, surprise, or excusable neglect,” “(3) fraud ..., misrepresentation, or misconduct by an opposing party,” or “(6) any other reason that justifies relief.” Fed. R. Civ. Pro. R. 60(b). “A motion under Fed. R. Civ. P. 55(c) and 60(b) seeking relief from such a judgment is generally treated with more liberality by the Board Among the factors to be considered in determining a motion to vacate a default judgment for failure to answer the complaint are (1) whether the plaintiff will be prejudiced, (2) whether the default was willful, and (3) whether the defendant has a meritorious defense to the action.” TBMP § 544.

Registrant moves this Board to set aside the default judgment, as such relief is justified under the circumstances of this case, more fully described below. Indeed, Registrant suggests the plaintiff in this matter, Racer Sporting Goods, will not be prejudiced, the default was not willful, and Registrant has a meritorious defense to the action. Registrant further requests that the Registration be reinstated and that Registrant be allowed to defend the cancellation action.

I. STATEMENT OF FACTS

A. The Registration and Relationship Between the Parties

1. On March 19, 1985, Registration No. 1,326,105 for the mark “+POS” and Design was issued to Parsons Officials Supplies, Inc. The “POS” in the registered mark is derived from the initials of the Registrant, Parsons Officials Supplies.

2. On September 22, 2004, the Registration was renewed. At that time, the address for Registrant in the Trademark Office’s records read 501 Lunt Avenue, Schaumburg, Illinois 60193.

3. Dan Parsons is President of the Registrant. Until recently, Registrant was controlled by Charles Parsons, Dan Parsons’ father. Charles Parsons, Dan Parsons and Registrant are all located and/or reachable at the same addresses, as further explained below.

4. Racer Sporting Goods Co., Ltd. (“Racer”) is a Taiwanese company that produced merchandise for Registrant, including umpire equipment. The goods produced by Racer for Registrant bore Registrant’s “+POS” mark. Registrant’s business included selling “+POS” goods sourced from Racer to the general public and other relevant consumers.

B. The Dispute and Ensuing Court Action; Racer's Actual Knowledge of the Registrant's Addresses

5. After some time in this relationship, a conflict developed between Registrant and Racer with regard to certain items and the responsibility to pay outstanding invoices.

6. On September 25, 2006, Racer filed a lawsuit in the Circuit Court of Cook County, Illinois against Registrant and Charles Parsons individually, alleging a breach of contract and unfair competition. The complaint in this action was served upon Registrant by personally serving Charles Parsons at the home he and Dan Parsons share, namely 930 Meadow Lane, Elgin, Illinois 60123, on October 20, 2006. A copy of the complaint is attached as Exhibit A.

7. Ultimately, a judgment issued in the civil lawsuit on June 20, 2007. This judgment was against Registrant and Charles Parsons and listed two addresses: 515 W. Lunt Ave., Schaumburg, Illinois 60193, and Charles and Dan Parsons' home address at 930 Meadow Lane, Elgin, Illinois 60123. A copy of the Memorandum of Judgment from the Cook County Court is attached as Exhibit B.

8. On August 14, 2007, the Cook County Court issued a Citation to Discover Assets to Registrant, to discover information regarding the unsatisfied amount left in the judgment. This Citation lists Registrant at 515 W. Lunt Ave. and 930 Meadow Lane. A copy of the Citation to Discover Assets is attached as Exhibit C.

9. Racer subsequently secured a lien on the home at 930 Meadow Lane, Elgin, Illinois 60123.

C. Racer's Petition to Cancel Registrant's Registration and Victory by Default Through Failure to Serve

10. On June 12, 2009, Racer filed a Petition to Cancel the Registration for "+POS" before the TTAB. Racer served the Petition on Registrant at the 501 Lunt Ave., Schaumburg, Illinois 60193 address as listed in the Registration. A copy of the Petition to Cancel, along with the Certificate of Service, is attached as Exhibit D.

11. Registrant is not located at 501 Lunt Ave., Schaumburg, Illinois 60193. Until recently, Registrant's business address had been 515 W. Lunt Ave., Schaumburg, Illinois 60193. While Registrant is no longer located at 515 W. Lunt Ave., mail is still forwarded from this address to Dan Parsons' home at 930 Meadow Lane, Elgin, Illinois 60123.

12. Dan Parsons, the current President of Registrant, lives at 930 Meadow Lane, Elgin, Illinois 60123, and has lived there with Charles Parsons continuously since prior to when Racer personally served his father, Charles Parsons, both personally and as a representative of Registrant, at that same home address with the state court lawsuit against Registrant in 2006.

13. On June 24, 2009, Racer filed with the TTAB a notification that the service copy was returned to it as undeliverable. Racer did not indicate to the Board that it knew of any alternative address(es) for Registrant, despite Racer's actual knowledge of Charles and Dan Parsons' home address at 930 Meadow Lane, Elgin, Illinois 60123, and Racer's actual knowledge of the business address at 515 W. Lunt Ave., Schaumburg, Illinois 61093. A copy of Racer's notification to the Board is attached as Exhibit E.

14. Registrant never received a copy of the Petition to Cancel from Racer, nor from the Board.

15. On August 25, 2009, the TTAB effectuated service by publication in the Official Gazette.

16. On October 10, 2009, the TTAB issued an order granting the petition to cancel and ordering the Registration to be canceled in due course.

17. On October 27, 2009, the Registration was canceled under Section 18.

D. Racer's Quick Trademark Application for "+POS"

18. Shortly after the TTAB cancelled the Registrant's Registration (on October 27, 2009), on November 20, 2009, Racer filed a trademark application for +POS, claiming first use in commerce on October 28, 2009, just one day after the Registration was cancelled. The specimen of use filed with the application shows use of +POS in the stylized form identical to Registrant's use. See Exhibit F, the application as printed out from the USPTO's TDR database.

E. Registrant's Actions After Learning of the Default

19. Registrant conducted a regular review of the Trademark Office's electronic, online database to confirm the status of its Registration and was surprised to discover that the Registration had been canceled. This check occurred in or around February 2010.

20. On March 8, 2010, Registrant, through its counsel, filed a Petition to the Director of Trademarks under 37 C.F.R. § 2.146(a)(5) requesting the Director invoke his supervisory authority to reinstate the Registration and allow Registrant to defend the cancellation action.

21. On April 23, 2010, Registrant's counsel received a decision from the Director's office, denying the petition but suggesting Registrant file a motion with the Board under Federal Rules of Civil Procedure Rules 55(c) and 60(b) instead. See Exhibit G, a copy of the decision from the Commissioner of Trademarks.

II. SETTING ASIDE THE DEFAULT JUDGMENT UNDER RULES 55(c) AND 60(b) IS JUSTIFIED

A. Racer Sporting Goods Knew of a Correct Address for Registrant and Failed to Notify the Board, Despite Having a Duty to Do So

Racer was a supplier to Registrant, having done business with Registrant up to approximately 2006, the time of the state lawsuit. As late as June 22, 2006, Racer supplied Registrant with a statement of accounts due. (Exhibit H.) When Racer chose to sue Registrant over the breach of contract claim, Racer chose to serve Registrant at the home of Charles and Dan Parsons, Registrant's former and current presidents respectively, located at 930 Meadow Lane, Elgin, Illinois. Service having been effective, Racer had confirmation that Registrant could be reached at this 930 Meadow Lane address. Furthermore, the Court's final judgment, which was provided to Racer (just as it was Registrant), confirmed that as of June 20, 2007, Registrant had two valid addresses: 515 W. Lunt Ave. in Schaumburg and 930 Meadow Lane in Elgin. (Exhibit B.) These addresses were confirmed in the Court's August 14, 2007 Citation to Discover Assets. (Exhibit C.) While Registrant has recently sold its business location at 515 W. Lunt Ave. in Schaumburg, mail addressed to that address is still forwarded to Registrant at 930 Meadow Lane. Therefore, any mail addressed to *either address* actually known to Racer would have successfully reached Registrant.

Under the TTAB rules, a cancellation petitioner's first responsibility is to serve the address listed in the owner section of the current online records from the USPTO. 37 C.F.R. § 2.111(b). Racer did this by mailing a copy of the Petition for Cancellation to Registrant at 501 Lunt Ave., Schaumburg, Illinois. (Exhibit D.) If service is ineffective, the petitioner then has a requirement to notify the Board of such. 37 C.F.R. § 2.111(b). While the petitioner is under no obligation to go searching for a correct address, "notice to the Board of failure of service *must*

include, if known, any new address information for the defendant whose service copy was returned to the plaintiff or reported to be undeliverable.” Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 72 Fed. Reg. 42242, 42243 (Aug. 1, 2007) (emphasis added). Upon receipt of new address information, the Board will effect service on such address. *Id.* Racer was indisputably well aware of new and valid addresses for Registrant, having successfully served Registrant with a lawsuit at 930 Meadow Lane, having received two different court orders (a judgment and the Citation) citing both 515 W. Lunt and 930 Meadow Lane, and having obtained a lien on Registrant’s President’s house at 930 Meadow Lane. Notwithstanding Racer’s knowledge of not one **but two** different addresses that would have reached Registrant, Racer never attempted service of the Petition to Cancel at either of them. Even more importantly, Racer also failed to inform the Board of the known new address information in direct violation of the rules as listed in the Federal Register. Misc. Changes to TTAB Rules, 72 Fed. Reg. at 42243. (Exhibit E.)

After the Registration was cancelled, Racer quickly filed a new trademark registration for the mark “+POS.” (Exhibit F.) Registrant became aware of the cancellation only recently through a regular check of the USPTO’s records. As noted above, Registrant then contacted counsel and now files the present motion.

B. Registrant’s Default was Not Willful and Registrant Has a Meritorious Defense to the Cancellation

Registrant’s default was not willful, but the result of Racer’s failure to fairly notify Registrant of the cancellation action. As explained above, Racer actually knew of at least two addresses that would have resulted in Registrant having been notified of Racer’s Petition to Cancel. Racer’s failure to notify the Board of Registrant’s known address information was in

violation of the rules. As a result of this violation of the rules, Registrant was never informed of the cancellation action and was not given the opportunity to respond, which it most certainly would have done if given the opportunity. Registrant's default was not willful.

Racer's inactions prevented Registrant, the Trademark Office, and the public of the benefit of a cancellation proceeding decided on the full facts and merits. Racer secured a default judgment in the cancellation through its own failure to act and meet its obligations under the rules, resulting in the improper cancellation of a valid registration.

Furthermore, Registrant has not abandoned its +POS mark, which has been registered for over 20 years. To the contrary, the mark continues to function as a source indicator for Registrant's goods. If given the opportunity, Registrant would vigorously defend the cancellation action with evidence of its own use of the +POS mark. Registrant has documentary evidence establishing its continued use and evidencing no intent to abandon the mark. As such, Registrant has a meritorious defense to the cancellation action.

C. Racer Will Not Be Prejudiced By Setting Aside the Default Judgment

Setting aside the default judgment is appropriate as Racer will not be prejudiced. After failing to notify the Board of known new addresses for the Registrant, Racer surely cannot complain of any prejudice or harm arising from the reinstatement of the Registration. Any harm that may come to Racer by virtue of the reinstatement would be a result of its own conduct. Furthermore, Registrant submits any harm that might be claimed stemming from Racer's new application is no more than the filing fee. Indeed, there is no real harm done to Racer as Racer's application for the "+POS" mark was only recently filed and is now just subject to an Office Action, for which a response is due August 24, 2010. Racer, in its application, claimed use in commerce, but only since October 28, 2009 (the day after the Registration was canceled).

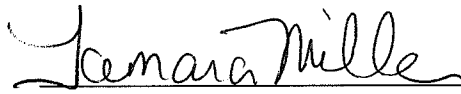
III. CONCLUSION

For the foregoing reasons, Registrant prays that the Board set aside the default judgment, reopen Cancellation No. 92051116 and grant Registrant the opportunity to defend the cancellation action. Registrant's request is within a reasonable time period after learning of the cancellation, certainly within one year after the default judgment issued.

In support of this motion, Registrant submits herewith a Declaration signed by Dan Parsons, President of Parsons Officials Supplies, Inc., with knowledge of the facts related to this motion.

Respectfully submitted,

Date: June 24, 2010

A handwritten signature in black ink, appearing to read "Tamara Miller", written over a horizontal line.

Tamara A. Miller
Michelle L. Calkins
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, 180 N. Stetson Ave.
Suite 4900
Chicago, IL 60601
Phone (312) 616-5600
Fax (312) 616-5700
Attorneys for Registrant

+POS and Design
Registration No. 1,326,105
Cancellation No. 92051116

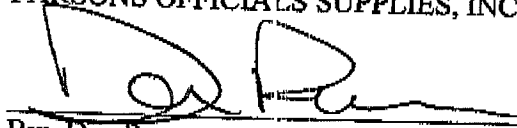
DECLARATION OF DAN PARSONS UNDER 37 C.F.R. § 2.20

Dan Parsons declares, under penalty of perjury, that he is authorized to make this declaration on behalf of the Registrant; and that the statements made in this Motion are true to the best of his knowledge and belief, based on his own knowledge, and that this Declaration is made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this registration.

Dated:

6-24-10

PARSONS OFFICIALS SUPPLIES, INC.




By: Dan Parsons

Title: President, Parsons Office Supplies, Inc.

CERTIFICATE OF ELECTRONIC FILING

The undersigned attorney hereby certifies that the foregoing Motion for Relief from Final Default Judgment, Exhibits and Declaration were electronically filed with the United States Patent and Trademark Office on the date shown below.

Dated: June 24, 2010


Michelle L. Calkins

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing Motion for Relief from Final Default Judgment, Exhibits and Declaration were served by First Class Mail to the following addresses, such being the address of the attorney used by Racer to file the Petition for Cancellation (Donald Dennison) and the attorney used by Racer to file its "+POS" trademark application (Raphael Gutierrez):

Donald L. Dennison
Dennison, Schultz & Macdonald
1727 King Street
Alexandria, VA 22314

Raphael A. Gutierrez
Jackson Intellectual Property Group, PLLC
106 Starvale Lane
Shipman, VA 22971

Dated: June 24, 2010



Michelle L. Calkins

Exhibit A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

| | | |
|---|---|-----|
| RACER SPORTING GOODS CO., LTD., |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| Vs. |) | No. |
| |) | |
| +POS, INC. and CHARLES O. PARSONS, ind. |) | |
| and dba PARSONS SPORT CENTER, INC., |) | |
| |) | |
| Defendant |) | |

06 SEP 25 PM 4:14
CIRCUIT COURT OF COOK
COUNTY ILLINOIS
CLERK

COMPLAINT AT LAW

Now comes the plaintiff, Racer Sporting Goods Co., Inc., by and through its attorneys, Heller and Frisone, Ltd., and complains of the defendants, +POS, Inc. and Charles O. Parsons, individually and doing business as Parsons Sport Center, Inc., as follows:

**Count I
(Breach of Contract)**

1. That on or about January 29, 2000, and at all times thereafter, the plaintiff, Racer Sporting Goods Co., Inc., was, and is, a foreign corporation registered and located in Taipei Hsien, Taiwan, Republic of China, whose principal business purpose is the manufacture and sale of sporting goods, equipment and clothing to business entities throughout the world.

2. That on or about the aforesaid date, the defendant, +POS, Inc., was an Illinois corporation, located in Schaumburg, Illinois, whose principal business purpose was the sale of sporting goods, equipment and clothing relating to minor league referees, umpires and other officials.

3. That on or about the aforesaid dates, on information and belief, the defendant, Charles O. Parsons, was the principal officer, director and shareholder of the defendant, +POS, Inc.

4. That on or about the aforesaid dates, on information and belief, the defendant, Charles O. Parsons, had been the principal officer, director and shareholder of Parsons Sport Center, Inc., an Illinois corporation that was chartered on November 19, 1986 and involuntarily dissolved on April 1, 1995.

5. That on or about the aforesaid, and notwithstanding the dissolution of Parsons Sport Center, Inc., the defendant, Charles O. Parsons, continued to do business with the plaintiff under the name Parsons Sport Center, Inc.

6. That on or about the aforesaid date, and on various dates thereafter, through and including January 12, 2006, the defendant, Charles O. Parsons, individually and on behalf of Parsons Sport Center, Inc. and/or +POS, Inc. placed orders on a regular basis with the plaintiff for the purchase of certain sporting goods, equipment and clothing.

7. That plaintiff received and accepted the defendants' purchase orders, and delivered the goods, equipment and clothing ordered by the defendants to their designated location.

8. That throughout the aforesaid period of time, the plaintiff fulfilled all of its obligations pursuant to its sales agreements with the defendants in that it manufactured, sold and delivered the goods, equipment and clothing ordered by the defendants.

9. That defendants failed to comply with the terms and conditions of the sales agreements with the plaintiff in that they failed to pay plaintiff for the goods, equipment and clothing sold and delivered to them.

10. That defendants have made numerous payments on their account, but failed to pay the balance due and owing, namely, \$210,000.00. (See Exhibits "A" and "B")

11. That plaintiff has demanded payment of the balance due and owing, but that defendants have failed to pay same.

WHEREFORE, plaintiff prays for the entry of a judgment against the defendants in the sum of \$210,000.00 plus costs.

**Count II
(Account Stated)**

11. Plaintiff realleges paragraphs 1 through 10 of Count I as paragraphs 1 through 10 of this Count, and in the alternative states:

12. That plaintiff sent defendant regular invoices relating to the goods that were sold and delivered, and that defendants never objected to the propriety of same.

13. That defendant made payments on the account, but a balance remains due and owing of \$210,000.00.

14. That by failing to object to the propriety of the invoices, and by making partial payments on the account, an account stated exists between the parties, and the defendants are liable to the plaintiff for the balance due and owing, namely, \$210,000.00.

WHEREFORE, plaintiff prays for the entry of a judgment against the defendants in the sum of \$210,000.00 plus costs.

**Count III
(Unjust Enrichment)**

15. Plaintiff realleges paragraphs 1 through 15 of Count II as paragraphs 1 through 15 of this Count, and in the alternative states:

16. That defendants received, accepted and used the goods, equipment and clothing that it received from the plaintiff, and as such, derived a benefit from same.

17. That defendants did not pay for the goods, equipment and clothing that it received from the plaintiff.

18. That by receiving, accepting and using the goods, equipment and clothing delivered by the plaintiff without paying for same, the defendants have been unjustly enriched.

19. That since defendants have been unjustly enriched by the goods, equipment and clothing that plaintiff delivered to them, a contract implied in law exists between the parties, and the defendants owe the plaintiff the sum of \$210,000.00 for the value of said goods, equipment and clothing.

WHEREFORE, plaintiff prays for the entry of a judgment against the defendants in the sum of \$210,000.00 plus costs.

RACER SPORTING GOODS CO., LTD.

By: 

Paul M. Heller, its attorney

Heller and Frisone, Ltd.
33 North LaSalle Street - Ste. 1200
Chicago, Illinois 60602
(312) 236-3644

Exhibit B



3315 (4/18/95) CCG 0015
Memorandum of Judgment
=====

2007K081609

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

SANDY WEGMAN
RECORDER - KANE COUNTY, IL

RECORDED: 8/6/2007 8:38 AM
REC FEE: 25.00
PAGES: 1

RACER SPORTING GOODS CO, LTD

v.

Recorder's Stamp

POS, INC. AND
CHARLES O. PARSONS ind. and dba
PARSONS SPORT CENTER, INC.
930 Meadow Ln.
Elgin, IL 60123
FIN: 06-02-351-007

No. 06L010198

MEMORANDUM OF JUDGMENT

On 06/20/2007, judgment was entered in this court
in favor of the plaintiff RACER SPORTING GOODS CO, LTD
and against defendant POS, INC. and CHARLES O. PARSONS ind. and dba
PARSONS SPORT CENTER, INC., whose address is 515 W LUNT AVE,
SCHAUMBURG, IL 60193 in the amount of \$210,000.00. and whose
address is also 930 Meadow Ln, Elgin, IL 60123.

Judge Ronald F. Mackowicz
ENTERED Page's No.

JUN 20 2007

Circuit Court - 193

200618684
Name: Keller & Frisone Ltd.
Attorney for: Plaintiff
Address: 33 N. LaSalle St. #1200
City: Chicago, IL 60602
Telephone: 312/236/3644
Atty No.: 90859

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

STAMPED SIGNATURE

25

Exhibit C

RB

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

RACER SPORTING GOODS CO, LTD

FILED-49

VS.

07 AUG 14 PM 12:00

No. 06L010098

+POS, INC

200618084

CLERK OF THE CIRCUIT COURT

CIVIL DIVISION

CITATION TO DISCOVER ASSETS

CLERK

To: +POS, INC, c/o CHARLES PARSONS SPIN
515 W LUNT AVE, SCHAUMBURG, IL 60193, or serve at
930 MEADOW LANE, ELGIN, IL 60123

YOU ARE COMMANDED to appear before the Judge Presiding in Room 2503
Richard J. Daley Center-Randolph & Clark Streets, Chicago, Illinois, 60602,
on 08/16/2007, at 9:30 a.m. to be examined under oath to discover assets or
income not exempt from the enforcement of the judgment.

A judgment against +POS, INC was entered on 06/20/2007 and \$212,081.78
remains unsatisfied.

YOU ARE COMMANDED to produce at the examination: all books, papers or records
in your possession or control which may contain information concerning the
property or income of, or indebtedness due judgment debtor.

YOU ARE PROHIBITED from making or allowing transfer or other disposition of,
or interfering with, any property not exempt from execution or garnishment
belonging to the judgment debtor or to which the judgment debtor may be
entitled or which may be acquired by or become due to the judgment debtor and
from paying over or otherwise disposing of any money not so exempt, which is
due or becomes due to the judgment debtor, until further order of court or
termination of the proceedings. You are not required to withhold the payment
of any money beyond double the amount of the judgment.

WARNING: YOUR FAILURE TO APPEAR IN COURT AS HEREIN DIRECTED MAY CAUSE YOU TO
BE ARRESTED AND BROUGHT BEFORE THE COURT TO ANSWER TO A CHARGE OF CONTEMPT OF
COURT, WHICH MAY BE PUNISHABLE BY IMPRISONMENT IN THE COUNTY JAIL.

CERTIFICATE OF ATTORNEY (OR NON-ATTORNEY)

Note: This citation must be accompanied at the time of service by either a
copy of the underlying judgment or a certification by either the clerk that
entered the judgment or the attorney for the judgment creditor setting forth:

In the Circuit Court of Cook County on 06/20/2007, a judgment in the amount of
\$\$210,000.00 was entered against +POS, INC in Case No. 06L010098 and a
balance of \$212,081.78 remains unsatisfied.

I, the undersigned certify under penalties as provided by law pursuant to 735
ILCS 5/1-109 that all information stated herein is true.

Atty.No.90859

Name Heller and Frisone, Ltd.

Address 33 N, LaSalle St., #1200

C,S,Z Chicago, IL 60602

Phone 312.236.3644

WITNESS:

Clerk of the Circuit Court

** THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED **
** WILL BE USED FOR THAT PURPOSE **

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

Exhibit D

TTAB



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RACER SPORTING GOODS CO., LTD.]

Petitioner,]

v.]

PARSONS OFFICIALS SUPPLIES, INC.]

Registrant.]

Cancellation No. _____

73/450,516

PETITION FOR CANCELLATION

Petitioner, Racer Sporting Goods Co., Ltd., through its attorneys noted herein, hereby petitions this Honorable Board to order the cancellation of United States Trademark Registration, No. 1,326,105, registered March 19, 1985 to Parsons Officials Supplies, Inc., a corporation of Illinois. This registration covers the mark **+POS** as applied to umpire protection equipment in Class 28.

LAW OFFICES
DENNISON, SCHULLEY & MACDONALD

1727 N. G STREET
ALEXANDRIA, VIRGINIA 22314-2700

703 837-0600

06/12/2009 15:10:01 00000078 1326105

300.00 DP



06-12-2009

Petitioner believes that it will be damaged by the existence on the register of this mark in Class 28 for the reasons as set forth below and therefore seeks relief by cancellation.

1. Petitioner, Racer Sporting Goods Co., Ltd. is a limited company of Taiwan and has its principal business located at 1^F, No. 17, Kung 6 Road, Kung 2 Industrial Park, Lin Ko Hsiang, Taipei Hsien, Taiwan.

2. The Registration here sought to be canceled covers the mark **+POS** as applied to umpire protection equipment in Class 28 and the same are considered as sports equipment used in the sport of baseball.

3. Petitioner produces an extensive line of sporting goods including baseball catcher's and umpire's protective equipment, similar or identical to such goods covered by the registration sought herein to be cancelled

4. Petitioner contemplates the filing of an application to register the mark **+POS** or another mark similar thereto in the United States within the very near future and has discovered the registration of the Registrant here sought to be cancelled.

5. It is believed that any application by the Petitioner for the mark **+POS** would be refused registration under Section 2(d) of the Trademark Act based upon a perceived likelihood of confusion with the goods set forth in United States trademark Registration 1,326,105, the registration here sought to be cancelled.

6 The marks of the Registrant and the Petitioner are similar or identical in sound and appearance and the United States Patent and Trademark Office so as to cause possible confusion in the minds of the purchasers as to the source of the goods.

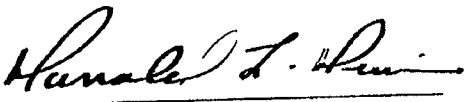
7. Upon information and belief, registrant has made no use of its mark in connection with its services since the company was dissolved and such non-use is believed to have been continuous for at least three years and accordingly the Registrant has abandoned any trademark rights it may have had. Such prior use has been discontinued without any intent to resume such use and accordingly it must be presumed that the mark has been abandoned. See 15 USC §1127.

WHEREFORE, Petitioner respectfully moves the Trademark Trial and Appeal Board to cancel the registration of the Registrant, No. 1,326,105.

A credit card charge authorization in the amount of \$300 is attached hereto as required by the Rules of Practice.

Respectfully submitted,

RACER SPORTING GOODS CO., LTD.

By 

June 12, 2009

Donald L. Dennison,
Dennison, Schultz & Macdonald
Suite 105
1727 King Street
Alexandria, VA 22314
(703)837-9600 Ext. 15
Attorneys for Petitioner

CERTIFICATE OF SERVICE

This is to certify that a copy of this Petition to Cancel was served by first class mail with proper postage affixed, this 12th day of June, 2009, upon the Registrant, Parsons Officials Supplies, Inc. at 501 Lunt Avenue, Schaumburg, IL 60193.

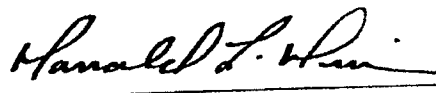
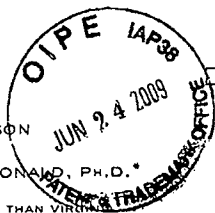

Donald L. Dennison

Exhibit E

TTAB



DONALD L. DENNISON
IRA J. SCHULTZ
MALCOLM J. MACDONALD, Ph.D.*
*MEMBER OF BAR OTHER THAN VIRGINIA

LAW OFFICES
DENNISON, SCHULTZ & MACDONALD
SUITE 105
1727 KING STREET
ALEXANDRIA, VIRGINIA 22314-2700
PHONE (703) 837-9600
e-mail: mail@dennisonlaw.com
www.dennisonlaw.com
June 24, 2009

INTELLECTUAL
PROPERTY LAW
FACSIMILE (703) 837-0980
OF COUNSEL
GEORGE H. SPENCER*

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Trademark Cancellation No. 92051116
Racer Sporting Goods Co., Ltd.
v. Parsons Officials Supplies, Inc.
Registration No. 1,326,105
Undeliverable Service Copy of
Petition for Cancellation

Sir:

In compliance with the requirements of 37 C.F.R. §2.111, counsel for the Petitioner, Racer Sporting Goods Co., Ltd., hereby notifies the Board that the service copy of the Petition for Cancellation has been returned by the United States Postal Service bearing the marking "Return to Sender Not Deliverable as Addressed Unable to Forward Return to Sender". A copy of the front of this envelope is enclosed.

The address to which the service copy was sent is the identical address that appears in the records of the United States Patent and Trademark Office for the Registrant, Parsons Officials Supplies, Inc.

Respectfully submitted,

Donald L. Dennison
Attorney for Petitioner

DLD/jet
Enclosure



06-24-2009

U.S. Patent & TM Office, Alexandria, VA

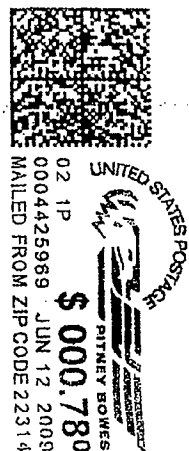
LAW OFFICES
DENNISON, SCHULTZ & MACDONALD
SUITE 105
1727 KING STREET
ALEXANDRIA, VIRGINIA 22314-2700

Parsons Officials Supplies, Inc.
501 Hunt Avenue
Schaumburg, IL 60193

PARS501 60193

NIXIE 3016 1 17 06/20/03

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
RETURN TO SENDER



COPY

Exhibit F

Trademark/Service Mark Application, Principal Register

Serial Number: 77874885

Filing Date: 11/17/2009

The table below presents the data as entered.

| Input Field | Entered |
|--|--|
| SERIAL NUMBER | 77874885 |
| MARK INFORMATION | |
| *MARK | +POS |
| STANDARD CHARACTERS | YES |
| USPTO-GENERATED IMAGE | YES |
| LITERAL ELEMENT | +POS |
| MARK STATEMENT | The mark consists of standard characters, without claim to any particular font, style, size, or color. |
| REGISTER | Principal |
| APPLICANT INFORMATION | |
| *OWNER OF MARK | Racer Sporting Goods Co., Ltd |
| *STREET | 1F, No 17, Kung 6 Rd, Kung 2, Ind'l Park |
| *CITY | Taipei |
| *COUNTRY | Taiwan |
| EMAIL ADDRESS | trademarks@jacksonipg.com |
| LEGAL ENTITY INFORMATION | |
| TYPE | corporation |
| STATE/COUNTRY OF INCORPORATION | Taiwan |
| GOODS AND/OR SERVICES AND BASIS INFORMATION | |
| *INTERNATIONAL CLASS | 028 |
| | VOLLEYBALLS AND SOCCER BALLS; INFLATED SPORT BALLS; BASEBALL |

***IDENTIFICATION**

BASES, FIXED AND MOVABLE, INDOOR AND OUTDOOR; BASEBALL BASE SPIKES, BASE STRAPS AND BASE ANCHORS; PITCHER'S PLATES; AND INDOOR AND OUTDOOR HOME PLATES; FLAG FOOTBALL BELTS; WRIST TRAINING WEIGHTS FOR EXERCISE; ANKLE TRAINING WEIGHTS FOR EXERCISE; HEEL PROTECTIVE CUPS FOR USE BY TRACKMEN; PROTECTIVE NECK ROLLS FOR FOOTBALL PLAYERS; PROTECTIVE GUARDS AND PADS FOR WEAR BY FOOTBALL PLAYERS, SOCCER PLAYERS, VOLLEYBALL PLAYERS, BASKETBALL PLAYERS, WRESTLERS, FIELD HOCKEY PLAYERS, HOCKEY PLAYERS, STREET HOCKEY PLAYERS, UMPIRES AND BASEBALL PLAYERS; SHIN GUARDS FOR WEAR BY SOCCER PLAYERS; SHIN PADS FOR WEAR BY HOCKEY PLAYERS; FIELD HOCKEY LEG GUARDS; BASEBALL AND SOFTBALL FACE MASKS; WRESTLING HEAD GUARDS; WRESTLING LEG BANDS; HOCKEY LEG STRAPS; TRAINING WEIGHT LIFTING BELTS; WEIGHT LIFTING BELTS AND PROTECTIVE PADDING FOR WEIGHT LIFTERS, NAMELY, WEIGHT LIFTING HEADGEAR; BASEBALL UMPIRE AND CATCHER'S CHEST AND/OR BODY PROTECTORS; BASEBALL GLOVES, NAMELY, FIELDER'S AND BASEMAN'S GLOVES AND CATCHER'S MITTS. GLOVES WORN BENEATH OR WITHIN BASEBALL GLOVES, AND GLOVES FOR GRIPPING SPORTING EQUIPMENT, NAMELY, BATS AND TENNIS RACKETS; SOCCER GOALIE GLOVES; ATHLETIC SUPPORTERS, PROTECTIVE CUPS FOR USE WITH ATHLETIC SUPPORTERS; ATHLETIC SUPPORT EQUIPMENT, NAMELY, ELASTIC KNEE SUPPORTS, KNEE PADS, HAND GUARDS, WRIST GUARDS, FOREARM

| | |
|--|---|
| | GUARDS, COMBINATION FOREARM AND WRIST GUARDS, ELBOW PADS, WRIST BRACES NOT FOR MEDICAL USE, ELBOW BRACES NOT FOR MEDICAL USE, TENNIS ELBOW BRACES NOT FOR MEDICAL USE, ANKLE SUPPORTS, SUPPORTS WORN ON LOWER LEG TO MINIMIZE OR RELIEVE SHIN SPLINT TROUBLE, ABDOMINAL BRACES AND THIGH BRACES NOT FOR MEDICAL USE, SOCCER FIELD MARKERS; SPORTS EQUIPMENT, NAMELY, PINE TAR RAG FOR USE WITH BASEBALL BATS; MECHANICAL HAND-HELD BASEBALL BALLS/STRIKES/OUTS INDICATOR FOR USE DURING GAMES; AND BASEBALL HOME PLATE BRUSHES. |
| FILING BASIS | SECTION 1(a) |
| FIRST USE ANYWHERE DATE | At least as early as 10/28/2009 |
| FIRST USE IN COMMERCE DATE | At least as early as 10/28/2009 |
| SPECIMEN FILE NAME(S) | \\TICRS\EXPORT8\IMAGEOUT8\778\748\77874885\xml1\AP P0003.JPG |
| SPECIMEN DESCRIPTION | Picture of goods bearing mark. |
| ATTORNEY INFORMATION | |
| NAME | Raphael A. Gutierrez |
| ATTORNEY DOCKET NUMBER | 7001.166 |
| FIRM NAME | Jackson Intellectual Property Group, PLLC |
| STREET | 106 Starvale Lane |
| CITY | Shipman |
| STATE | Virginia |
| COUNTRY | United States |
| ZIP/POSTAL CODE | 22971 |
| EMAIL ADDRESS | trademarks@jacksonipg.com |
| AUTHORIZED TO COMMUNICATE VIA EMAIL | Yes |
| OTHER APPOINTED ATTORNEY | Demian K. Jackson |

DOMESTIC REPRESENTATIVE INFORMATION

| | |
|-------------------------------------|---|
| NAME | Raphael A. Gutierrez |
| FIRM NAME | Jackson Intellectual Property Group, PLLC |
| STREET | 106 Starvale Lane |
| CITY | Shipman |
| STATE | Virginia |
| COUNTRY | United States |
| ZIP CODE | 22971 |
| EMAIL ADDRESS | trademarks@jacksonipg.com |
| AUTHORIZED TO COMMUNICATE VIA EMAIL | Yes |

CORRESPONDENCE INFORMATION

| | |
|-------------------------------------|---|
| NAME | Raphael A. Gutierrez |
| FIRM NAME | Jackson Intellectual Property Group, PLLC |
| STREET | 106 Starvale Lane |
| CITY | Shipman |
| STATE | Virginia |
| COUNTRY | United States |
| ZIP/POSTAL CODE | 22971 |
| EMAIL ADDRESS | trademarks@jacksonipg.com |
| AUTHORIZED TO COMMUNICATE VIA EMAIL | Yes |

FEE INFORMATION

| | |
|-------------------|-----|
| NUMBER OF CLASSES | 1 |
| FEE PER CLASS | 325 |
| *TOTAL FEE DUE | 325 |
| *TOTAL FEE PAID | 325 |

SIGNATURE INFORMATION

| | |
|----------------------|--------------|
| SIGNATURE | NOT PROVIDED |
| SIGNATORY'S NAME | NOT PROVIDED |
| SIGNATORY'S POSITION | NOT PROVIDED |

DATE SIGNED

NOT PROVIDED

PTO Form 1472 (Rev. 9-2000)
USPS No. 059-100US (Exp. 12/31/2003)

Trademark/Service Mark Application, Principal Register

Serial Number: 77874885

Filing Date: 11/17/2009

To the Commissioner for Trademarks:

MARK: +POS (Standard Characters, see mark)

The literal element of the mark consists of +POS.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Racer Sporting Goods Co., Ltd, a corporation of Taiwan, having an address of

1F, No 17, Kung 6 Rd, Kung 2, Ind'l Park

Taipei

Taiwan

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 028: VOLLEYBALLS AND SOCCER BALLS; INFLATED SPORT BALLS; BASEBALL BASES, FIXED AND MOVABLE, INDOOR AND OUTDOOR; BASEBALL BASE SPIKES, BASE STRAPS AND BASE ANCHORS; PITCHER'S PLATES; AND INDOOR AND OUTDOOR HOME PLATES; FLAG FOOTBALL BELTS; WRIST TRAINING WEIGHTS FOR EXERCISE; ANKLE TRAINING WEIGHTS FOR EXERCISE; HEEL PROTECTIVE CUPS FOR USE BY TRACKMEN; PROTECTIVE NECK ROLLS FOR FOOTBALL PLAYERS; PROTECTIVE GUARDS AND PADS FOR WEAR BY FOOTBALL PLAYERS, SOCCER PLAYERS, VOLLEYBALL PLAYERS, BASKETBALL PLAYERS, WRESTLERS, FIELD HOCKEY PLAYERS, HOCKEY PLAYERS, STREET HOCKEY PLAYERS, UMPIRES AND BASEBALL PLAYERS; SHIN GUARDS FOR WEAR BY SOCCER PLAYERS; SHIN PADS FOR WEAR BY HOCKEY PLAYERS; FIELD HOCKEY LEG GUARDS; BASEBALL AND SOFTBALL FACE MASKS; WRESTLING HEAD GUARDS; WRESTLING LEG BANDS; HOCKEY LEG STRAPS; TRAINING WEIGHT LIFTING BELTS; WEIGHT LIFTING BELTS AND PROTECTIVE PADDING FOR WEIGHT LIFTERS, NAMELY, WEIGHT LIFTING HEADGEAR; BASEBALL UMPIRE AND CATCHER'S CHEST AND/OR BODY PROTECTORS; BASEBALL GLOVES, NAMELY, FIELDER'S AND BASEMAN'S GLOVES AND CATCHER'S MITTS, GLOVES WORN BENEATH OR WITHIN BASEBALL GLOVES, AND GLOVES FOR GRIPPING SPORTING EQUIPMENT, NAMELY, BATS AND TENNIS RACKETS; SOCCER GOALIE GLOVES; ATHLETIC SUPPORTERS, PROTECTIVE CUPS

FOR USE WITH ATHLETIC SUPPORTERS; ATHLETIC SUPPORT EQUIPMENT, NAMELY, ELASTIC KNEE SUPPORTS, KNEE PADS, HAND GUARDS, WRIST GUARDS, FOREARM GUARDS, COMBINATION FOREARM AND WRIST GUARDS, ELBOW PADS, WRIST BRACES NOT FOR MEDICAL USE, ELBOW BRACES NOT FOR MEDICAL USE, TENNIS ELBOW BRACES NOT FOR MEDICAL USE, ANKLE SUPPORTS, SUPPORTS WORN ON LOWER LEG TO MINIMIZE OR RELIEVE SHIN SPLINT TROUBLE, ABDOMINAL BRACES AND THIGH BRACES NOT FOR MEDICAL USE. SOCCER FIELD MARKERS; SPORTS EQUIPMENT, NAMELY, PINE TAR RAG FOR USE WITH BASEBALL BATS; MECHANICAL HAND-HELD BASEBALL BALLS/STRIKES/OUTS INDICATOR FOR USE DURING GAMES; AND BASEBALL HOME PLATE BRUSHES.

In International Class 028, the mark was first used at least as early as 10/28/2009, and first used in commerce at least as early as 10/28/2009, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Picture of goods bearing mark..

Specimen File 1

The applicant hereby appoints Raphael A. Gutierrez and Demian K. Jackson of Jackson Intellectual Property Group, PLLC

106 Starvale Lane
Shipman, Virginia 22971
United States

to submit this application on behalf of the applicant. The attorney docket/reference number is 7001.166.

The applicant hereby appoints Raphael A. Gutierrez of Jackson Intellectual Property Group, PLLC

106 Starvale Lane
Shipman Virginia 22971
United States

as applicant's representative upon whom notice or process in the proceedings affecting the mark may be served.

Correspondence Information: Raphael A. Gutierrez

Jackson Intellectual Property Group, PLLC
106 Starvale Lane
Shipman, Virginia 22971
trademarks@jacksonipg.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

RAM Sale Number: 6577

RAM Accounting Date: 11/18/2009

Serial Number: 77874885

Internet Transmission Date: Tue Nov 17 20:39:07 EST 2009

TEAS Stamp: USPTO/BAS-76.169.39.68-20091117203907390

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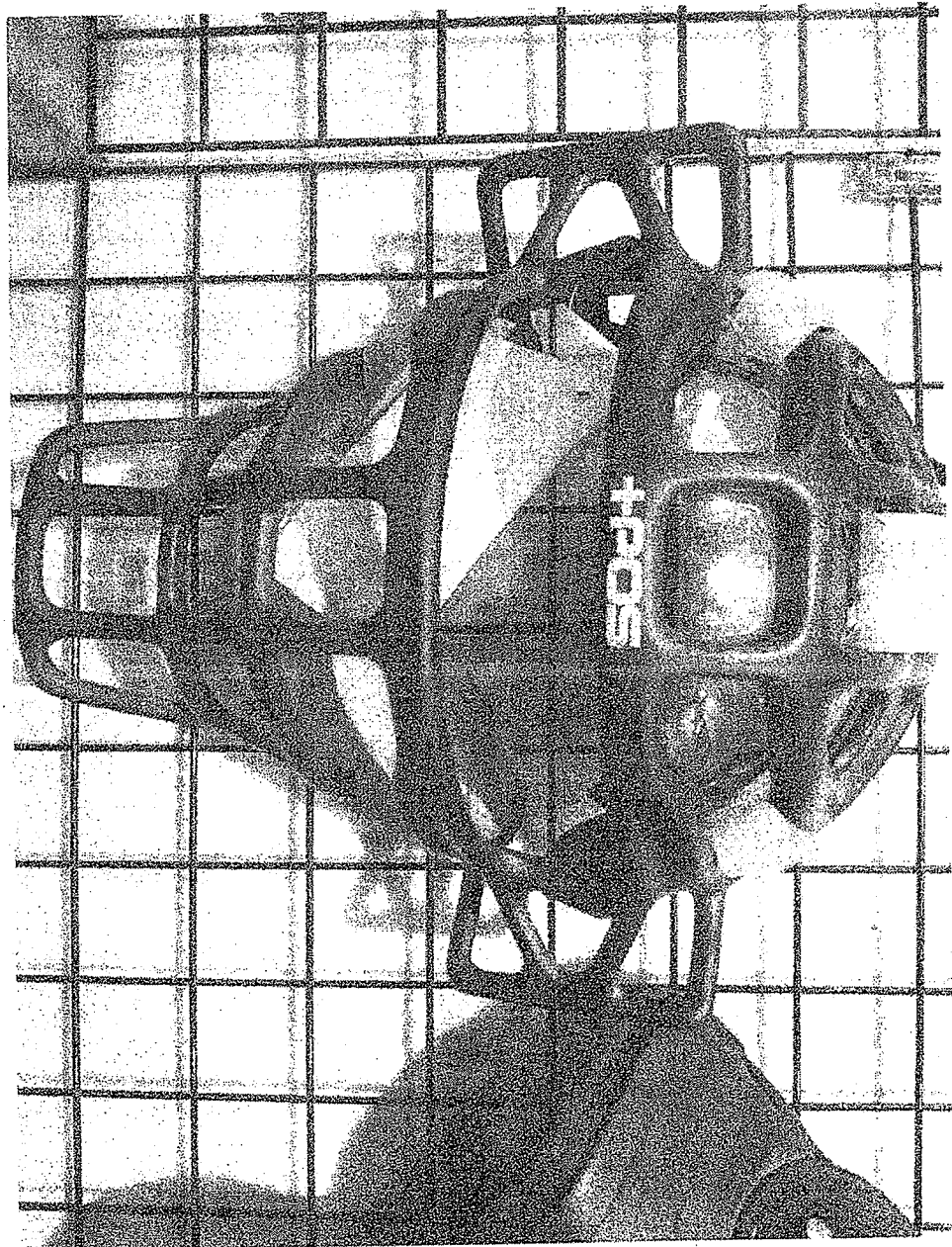


Exhibit G



To: TAM cc:

268809 / PARSONS

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

April 20, 2010

Tamara A. Miller, Esq.
Leydig, Voit & Mayer, Ltd.
Two Prudential Plaza, 180 N. Stetson Avenue
Suite 4900
Chicago, Illinois 60601

Re: Registration No. 1326105
Owner: Parsons Officials Supplies, Inc.
Mark: +POS (Stylized)

LEYDIG, VOIT & MAYER
RECEIVED

MJP

APR 23 2010

Dear Ms. Miller:

PAY/TM Due Date SEE LETTER
NOTHING DOCKETED

This acknowledges receipt on March 8, 2010 of your petition on behalf of Parsons Officials Supplies, Inc. to the Director of the United States Patent & Trademark Office (the Director) concerning the above-identified trademark registration.

In your petition, you request that the Director set aside a decision of the Trademark Trial and Appeal Board (Board) granting the petition to cancel the registration in Cancellation No. 92051116 and cancelling the above-identified trademark registration. You have further requested that the registration be reinstated and the petitioner allowed to defend the cancellation action. Review of a final decision of a proceeding before the Board is not proper subject matter for consideration by the Director under 37 C.F.R. §2.146. The petition is DISMISSED.

Pursuant to 35 U.S.C. §2 and 37 C.F.R. §2.146(a)(3), the Director may invoke supervisory authority in appropriate circumstances. A petition to the Director to review a decision by the Trademark Trial and Appeal Board is appropriate only where the Board's decision concerns matters of procedure, rather than the central issue(s) before the Board, and does not put an end to the litigation before the Board. *Chesebrough-Pond's Inc. v. Faberge, Inc.*, 618 F.2d 776, 205 USPQ 888 (C.C.P.A. 1980); *Miss Nude Florida, Inc. v. Drost*, 198 USPQ 485 (Comm'r Pats. 1977); *Scovill Manufacturing Co. v. Stocko Metallwarenfabriken Henkels und Sohn KG*, 191 USPQ 124 (Comm'r Pats. 1976); *Outdoor Sports Industries, Inc. v. Joseph & Feiss Co.*, 177 USPQ 533 (Comm'r Pats. 1973); TBMP §905; TMEP §1704.

In this case, the decision at issue is a default judgment because no answer was filed to the petition to cancel and no appearance was entered in response to service by publication in the Official Gazette. This decision may not be reviewed by petition to the Director, because it is a final decision that puts an end to the litigation before the Board, and as such is improper subject matter for petition.

Under Fed. R. Civ. P. 55(c) and 60(b), you may file a motion with the Board to set aside the default judgment. Because default judgments for failure to timely answer the complaint are not

avored by the law, a motion under Fed. R. Civ. P. 55(c) and 60(b) seeking relief from such a judgment is generally treated with more liberality by the Board than are motions under Fed. R. Civ. P. 60(b) for relief from other types of judgments. Among the factors to be considered in determining a motion to vacate a default judgment for failure to answer the complaint are (1) whether the plaintiff will be prejudiced, (2) whether the default was willful, and (3) whether the defendant has a meritorious defense to the action. TBMP §§312.03, 544.

A motion for relief from judgment must be made within a reasonable time. Fed. R. Civ. P. 60(c); TBMP §544.

The petition fee will be refunded.

Sincerely,

/Montia Givens Pressey/

Montia Givens Pressey

Staff Attorney

Office of the Commissioner for Trademarks

(571) 272 8944 (phone)

(571) 273 8944 (fax)

montia.pressey@uspto.gov (email)

cc: Donald L. Dennison, Esq.
Dennison, Schultz & MacDonald
1727 King Street, Suite 105
Alexandria, VA 22314

Exhibit H



通德興業股份有限公司
RACER SPORTING GOODS CO., LTD.

No. 17 Kung 6 Road, Lin-Kou 2nd Industrial Park, Taipei Hsien, Taiwan. R. O. C.
TEL: 886-2-603-1755
FAX: 886-2-601-0057 · 601-7716

To: +POS

Attn: Buck Parsons / Diana

Re: Racer's bank accounts 2

Date: 6/22/06 7/10/06 7/25

Account for the revised P.O.050912-05 US\$113,526.26 #91,526.26

| Due date | Amount | Received | R'cvd Date |
|----------|----------------|--------------|------------|
| 12/20/05 | US\$22,000.00 | \$ 21,990.00 | 01/05/06 |
| 06/20/06 | US\$30,000.00 | | |
| 07/20/06 | US\$30,000.00 | | |
| 08/20/06 | US\$31,526.26 | | |
| | US\$113,526.26 | | |

Beneficiary's Name: Racer Sporting Goods Co., Ltd.

Beneficiary's Address: 17 Kung 6 Rd. Linkou 2nd Ind. Park,
Taipei Hsien, Taiwan R.O.C.

Beneficiary's Account No.: 9689-22-31979-900

Beneficiary's Bank Name&address: CHANG HWA COMMERCIAL BANK LTD
Linkou Branch
No. 46 Linkou Rd. Linkou
Taipei Hsien, Taiwan R.O.C.
SWIFT ADDRESS: CCBCTWTP
Cable Address: CHBANKFD TAIPEI



Buck Parsons
Parsons Sport.Center Inc.

Mike Chen

Racer Sporting Goods Co., Ltd.